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IN THE
SUPREME COURT OF THE
UNITED STATES

OCTOBER TERM, 1947

No. 623

CARL F. DELAND,
Petitioner,

vs.

STATE OF MICHIGAN,
Respondent.

REPLY TO RESPONDENT'S REJOINDER TO
PETITIONER'S REPLY BRIEF

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AMERICAN BRIEF AND RECORD CO., GRAND RAPIDS, MICHIGAN

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On page two of the State's rejoinder, counsel cites decisions of the Michigan Supreme Court to the effect that the judge presiding at the preliminary examination might act as trial judge. Counsel for petitioner was informed as to these cases but was not concerned with the rule thereby established in Michigan for the reason that said rule has long been at variance with the provisions of Sec. 1 of the 14th Amendment to the U. S. Constitution.

The other point raised is that the question of the participation of Mr. Justice Dethmers in the decision in this case in the court below was not raised in the motion for re-hearing.

This case was decided by the court below on Oct. 13th, 1947. A copy of the opinion of the court was received

by counsel on Oct. 14th, 1947. This copy contained only the name of Mr. Justice Sharpe, who wrote the opinion — and not the names of the participating justices.

Michigan Court Rule 71 requires that the papers upon which a motion for re-hearing is based, shall be printed and filed in the Supreme Court of this State within 20 days of the filing of the opinion therein. The motion for re-hearing in this case was filed on Oct. 24, 1947, and was denied on Dec. 3rd, 1947.

The official report of this case in the court below was first published in the official advance sheets on November 13th, 1947 — 20 days after the motion had been filed, and after the time had elapsed for the filing of a new motion under the provisions of court rule 71.

Petitioner's counsel was not required to anticipate the violation of petitioner's constitutional rights by the court below. This question was raised at the earliest possible moment, in the petition for certiorari.

Counsel for petitioner has the copy of the opinion received by him from the court below; also the official advance sheet containing the opinion; which he requests permission to file in this court.

Respectfully submitted,

FRANK L. BLACKMAN,
Attorney for Petitioner.

BLACKMAN AND BLACKMAN,
Of Counsel.